



Colorado Interstate
Gas Company, L.L.C.
a Kinder Morgan company

February 20, 2015

Mr. Chris Hoidal
Director, Western Region
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
12300 W. Dakota Ave., Suite 110
Lakewood, CO 80228

Via email and overnight delivery

Re: PHMSA Warning Letter CPF 5-2015-1001W

Dear Mr. Hoidal:

Colorado Interstate Gas Company, L.L.C. (CIG or the Company) is in receipt of the above referenced Warning Letter, issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) and received by the Company on January 22, 2015. The Company is committed to ensuring pipeline integrity and to working with PHMSA to achieve that goal. Toward that end, CIG raised concerns regarding the Warning Letter in a recent meeting with you and as you requested CIG is submitting this letter to request withdrawal of the Warning Letter. We are hopeful that we can resolve the issues through a meeting, but in the alternative the Company hereby requests a hearing pursuant to 49 C.F.R. Part 190.211. Set forth below are PHMSA's allegation followed by CIG's response.

PHMSA Allegation

The Warning Letter alleges:

- “1. §192.935 What additional preventative and mitigative measures must an operator take?
 - (a) General requirements. An operator must take additional measures beyond those already required by Part 192 to prevent a pipeline failure and to mitigate the consequences of a pipeline failure in a high consequence area. An operator must base the additional measures on the threats the operator has identified to each pipeline segment. (See § 192.917) An operator must conduct, in accordance with one of the risk assessment approaches in ASME/ANSI B31.8S (incorporated by reference, see § 192.7), section 5, a risk analysis of its pipeline to identify additional measures to protect the high consequence area and enhance public safety. Such additional measures include, but are not limited to, installing Automatic Shut-off Valves [ASO] or Remote Control Valves

[RCV], installing computerized monitoring and leak detection systems, replacing pipe segments with pipe of heavier wall thickness, providing additional training to personnel on response procedures, conducting drills with local emergency responders and implementing additional inspection and maintenance programs.

CIG failed to implement the [automatic shutoff valve] ASV and [remote controlled valve] RCV study in a timely manner for adding protection to a high consequence area. The effective date of the Integrity Management regulations was December 2003. Part 192.935(a) requires a risk analysis be conducted per Section 5, ASME B31.8S to identify additional measures for protecting the high consequence area. Subsequently, CIG conducted the "ASV and RCV Study." At the time of the inspection, interviews CIG personnel revealed that CIG added either ASV or RCV as preventive and mitigative (P&M) measures for seven (7) high consequences areas (HCAs) within the Pueblo Area in March 2012 and one (1) HCA in December 2006. However, time period for implementing the ASV and RCV study was too long to enhance public safety."

CIG Response

CIG Complied with 49 C.F.R. Part 192.935(a)

CIG complied with 49 C.F.R. Part 192.935(a) even prior to December 17, 2004 and continues to comply with this regulation today. The documentation requested during the PHMSA inspection, however, did not provide a comprehensive understanding of the underlying facts and CIG did not understand from the questions asked that the Inspector sought all documentation of compliance with Part 192.935(a). As stated in the warning letter, the Integrity Management regulations were effective in December 2003. The regulations required operators to develop and follow an integrity program by December 17, 2004. CIG developed this program by December 17, 2004, including processes to implement selection of *additional* P&M measures based upon the threats identified for each covered segment in accordance with 49 C.F.R. Part 192.935(a). As described in detail below, CIG already had RCVs in several HCAs at the time of this analysis. These selection processes included the option of *additional* ASV/RCVs as one of the P&M measures. These initial P&M measures were reviewed and selected by CIG prior to December 17, 2004 and have been reviewed each year in compliance with 49 C.F.R. Part 192.935(a). Accordingly, the allegations in the Warning Letter are unfounded.

CIG Complied with both 49 C.F.R. Part 192.935(c) and PHMSA Guidance

Not only has CIG complied with 49 C.F.R. Part 192.935(a), we also complied with 49 C.F.R. Part 192.935(c) which requires an ASV/RCV risk analysis. CIG put the framework in place for this requirement prior to December 17, 2004 and performed a study in December 2006, which included the Pueblo area, and considered installation of automated valves. The study concluded that additional ASV or RCV valves would not be an efficient means of adding protection to the high consequence area. This was based upon the requirements noted in 49 C.F.R. Part 192.935(c), two studies conducted by the Gas Research Institute (GRI) and one study conducted by the U.S. Department of Transportation. It is important to note that neither the PHMSA regulation nor the agency or industry guidance available at that time specified what response time the operator should use when performing the study. CIG based its study on a response time

to the HCA of 3 hours, among other factors. At the time of the study, CIG had already installed RCVs in 5 of the HCAs prior to the rulemaking and the valves in the other 7 of the HCAs could be closed within 3 hours.

Despite the fact that 49 C.F.R. Part 192.935(c) and associated guidance do not set forth express response time requirements that trigger installation of automated valves and without changing the conclusion of its 2006 study, CIG voluntarily revised its philosophy in 2012 to be even more stringent, following suggestions offered to the industry from the Interstate Natural Gas Association of America (INGAA) in 2012. In particular, the Company proactively updated the analysis of all valves protecting HCAs, Class 3s and 4s and identified and scheduled RCVs or ACVs for installation where response time to the HCA exceeded 1 hour (as opposed to 3 hours), among other factors. Recall that 5 of the 12 HCAs [2980, 3000, 3687, 4217, 4319] in the Pueblo area already had RCVs installed. The additional review concluded that 4 of the remaining 7 HCAs could be accessed by CIG personnel within the 1 hour time frame so no RCVs or ASVs were necessary. This resulted in the identification of the potential need for RCVs in the 2 locations (covering the remaining 3 HCAs) in the Pueblo area in 2012 – one on the 212 Lateral and one on the regulated bypass 9A valve. In each case there were unique facts that drove the decision that an RCV should be installed. In the case of the 212 Lateral, the 2011 tie in of Line 248 to the 212 Lateral made the Lateral bi-directional and thus CIG concluded that because of the 2011 construction, an RCV on the 212 Lateral would be prudent. This addressed HCA 2999. In the case of the 9A valve, this valve has been closed since it was installed. However, in an abundance of caution, and applying the 1 hour standard, CIG determined that if the valve was ever opened (which it never has been) then CIG personnel might not be able to reach it in 1 hour so CIG made the conservative decision to install an RCV on the 9A valve, thus addressing HCAs 3368 and 4226. Based on the results of the relevant risk analysis and the time required for budgeting, engineering, design and implementation, these 2 valves (addressing 3 HCAs) were scheduled and installed as quickly as practical, in 2014. These facts were not discussed in detail with the Inspector because CIG did not understand that the Inspector sought this information.

The Regulations Do Not Establish a Deadline for Installation of ASVs/RCVs

The Warning Letter is based on a misapplication of the law as well as a misunderstanding of the facts. The regulation at issue requires that operators perform a risk analysis to identify additional P&M measures to protect the HCA and enhance public safety, including, among others, installing ASVs or RCVs. *49 C.F.R. Part 192.935(a)*. A different subsection of the regulation requires that if an operator determines through a risk analysis that an ASV or RCV would be an efficient means of adding protection to the HCA in the event of a gas release, the operator must install the ASV or RCV. *49 C.F.R. Part 192.935(c)*. In making this determination, PHMSA regulations do not set forth a response time to the HCA which would require the installation of automated valves, but require generally that operators consider pipe shutdown capabilities and location of nearest response personnel, among other factors. *Id.*

There is no time period specified in the regulations or guidance for implementation of P&M measures generally or ASV or RCVs specifically. In non-binding guidance, the Agency clearly states that “there is no fixed time requirement for implementing [P&M] actions.” *PHMSA Gas IMP FAQ-90 (dated 3/13/07)* (emphasis added). PHMSA further recognized that the time

required for implementation of P&M measures is “highly dependent on the proposed risk control activity.” that some measures “may involve major capital expenditures and require significant time for budgeting, engineering, design and implementation,” and notes that it “expects” operators to provide a schedule for implementation and “to act as quickly as practical after identifying the need for such risk controls.” *Id.* (emphasis added). Finally, there is no enforcement precedent specific to the timeframe for implementation of ASV or RCVs where they are identified as P&M measures.

Warning Letters are not the appropriate venue for an administrative agency to articulate new substantive regulatory requirements and interpretations of applicable law. An administrative agency may not enforce substantive rules unless they have been promulgated through notice and comment rulemaking. 5 U.S.C. § 553. By issuing this Warning Letter, the Agency is articulating a new interpretation of an existing rule that conflicts with PHMSA guidance, and thus has the effect of a rulemaking. The Administrative Procedure Act (APA), and the courts, prohibit that method of regulation. *See, e.g., Appalachian Power Co. v. EPA, 208 F.3d 1015, 1024-25 (D.C. Cir. 2000)* (finding that where an agency imposes substantive requirements beyond those in the existing legislative rule, it must go through notice and comment); *Shell Offshore, Inc. v. Babbitt, 238 F.3d 622 (5th Cir. 2001)* (finding that where an interpretation brings with it a change in the substance of the rule, that change requires notice and comment). PHMSA is reportedly drafting a proposed rule to require automated valves in certain populated and environmentally sensitive areas, and that is the appropriate forum for the Agency to issue new substantive rules as opposed to the enforcement action at issue. *See PHMSA Docket, Amendments to Part 192 and 195 to Require Valve Installation and Minimum Rupture Detection Standards*, PHMSA-2013-0255, <http://www.regulations.gov/#!docketDetail;D=PHMSA-2013-0255> (click on link for API Pipeline Conference San Antonio, TX 4.9.14). Likewise, CIG has learned from the experience of its affiliated companies that Warning Letters are considered by PHMSA in later enforcement actions and for that reason also, CIG feels very strongly that it must act now to overturn the erroneously issued Warning Letter.

Conclusion

It is important to recognize that installation of ASVs/RCVs is just one type of P&M and only one potential piece of an integrity management system. Indeed, in many areas, including identification, evaluation and remediation of integrity conditions under 49 C.F.R. Part 192.933, Kinder Morgan is an industry leader and those efforts have demonstrable effects in terms of risk reduction. The Warning Letter could be read to say that CIG is not doing enough to reduce real risk but that is not accurate. CIG, along with the other Kinder Morgan companies, is constantly evaluating, re-evaluating and taking actions to reduce risk as part of its overall integrity management system.

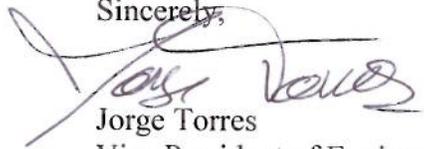
In the context of ASVs/RCVs, CIG’s compliance and commitment to risk reduction is demonstrated by CIG’s decision to install RCVs prior to any regulatory requirement to do so and then its decision to adopt the INGAA 1 hour standard for auto-close devices in 2012. These efforts towards constant improvement and risk reduction should not take away from the fact that CIG has complied with 49 C.F.R. Part 192.935(a) since 2004 by conducting and implementing P&M measures and by complying with 49 C.F.R. Part 192.935(c) in 2006. Moreover, the Part

192 regulations do not set forth a timeframe for implementing P&M measures generally or ASVs/RCVs specifically, as acknowledged in Agency guidance. CIG's current approach exceeds the regulatory requirements by automating valves where response time to the HCA exceeds 1 hour.

It is for all these reasons that CIG requests that the Warning Letter be withdrawn. It appears that a meeting with the Agency and the Company to discuss this issue would be productive and so I request that you contact me at 713-369-9232 or jorge_torres@kindermorgan.com to discuss a mutually agreeable time for such a meeting. In the alternative, given that the Warning Letter seeks to impose a timeframe for implementing P&M measures for ASVs/RCVs specifically that has not been previously articulated by the Agency, the Company is requesting a hearing in this matter. In order to prepare for a productive meeting with the Agency and/or a hearing and pursuant to 49 C.F.R. Part 190.209, CIG requests a copy of the PHMSA case file relied upon during preparation of this action, CPF No. 5-2015-1001W.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jorge Torres", is written over the typed name.

Jorge Torres

Vice President of Engineering

Cc: Benjamin Fred, PHMSA Hearing Officer
Jessica Toll, Esq.